

Law Offices of Andrea K. Rodgers Harris

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FREEDOM OF INFORMATION ACT REQUEST

July 22, 2013

Via U.S Mail

Stephanie Kercheval, FOIA Officer
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue (CEC-142)
Seattle, WA 98101
T: (206) 553-8665

Re: Request for information pertaining to EPA Inspection of CAFOs in Western Washington

Dear Ms. Kercheval,

This is a request under the Freedom of Information Act. 5 U.S.C § 552 *et. seq.* I am making this request on behalf of the Center for Environmental Law and Policy ("CELP"), Puget Soundkeeper Alliance ("Soundkeeper") and the Community Association for Restoration of the Environment ("CARE"). We hereby request that you provide copies of the following materials:

1. All records, data, studies, reports and communications— in any format¹ — generated or received by the Environmental Protection Agency ("EPA") regarding EPA inspections of CAFOs in Western Washington conducted from 2010-Present. Specifically included within the scope of this request are any communications the EPA staff have had regarding the inspections or the results thereof with the Washington State Department of Ecology, or any individual or entity acting on behalf of Ecology and the Washington State Department of Agriculture, or any individual or entity acting on behalf of Agriculture.
2. All records data, studies, reports and communications — in any format — generated or received by the Environmental Protection Agency regarding any and all enforcement actions against CAFOs in Western Washington conducted by, or at the behest of, the EPA from January 1, 2010- Present. Specifically included within the scope of this request is any data, studies, documents or information regarding EPA

¹ This includes, but is not limited to, printed or written correspondence, books, papers, photographs, email or other machine readable electronic record, telephone messages, voice-mails or other sound recordings, notes of personal conferences, telephone conversations or personal meetings. It also includes electronic copies or backups if the originals have been destroyed. This definition of communications applies to all documents sought by this letter.

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enforcement or investigation activities of both NPDES-permitted and unpermitted CAFOs in Western Washington.

3. All records data, studies, reports and communications — in any format — generated or received by the Environmental Protection Agency regarding the impacts of CAFOs on groundwater, surface water, wetlands, and estuaries in and around Puget Sound.
4. This request specifically excludes data, studies, reports and communications in any format — generated or received by the Environmental Protection Agency regarding the impact of Concentrated Animal Feeding Operations in Eastern Washington.

The purpose of this request is to be considered broadly and not exclude any other records that have a reasonable relationship to the subject matter of this request unless we have specifically stated the record to be excluded. If you or your office has destroyed or determines to withhold any documents that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

FEE WAIVER REQUEST

Additionally, I request that you waive all copy, clerical and other fees associated with providing information responsive to this request. The FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate, "if disclosure of the information is in the public interest." 5 U.S.C. § 552(a) (4) (A) (iii). Such disclosure is in the public interest if "it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.* The public interest test is not intended to be a difficult one to satisfy, as the Ninth Circuit has held a requester meets this burden in situations in which "They identified why they wanted the [requested information], what they intended to do with it, to whom they planned on distributing it. . ." *Friends of the Coast Fork v. BLM*, 110 F.3d 53, 55 (9th Cir.1997).

The Center for Environmental Law and Policy (CELP) is a 501(c)(3) non-profit based in Washington State. Since becoming a non-profit in 1995, CELP's mission has been to protect and restore clean, flowing rivers and drinking water aquifers in Washington State through science-based management. CELP works through agency advocacy, legislative advocacy, public outreach and collaboration, and public interest litigation.

CELP serves all Washingtonians by protecting and restoring rivers and aquifers that are essential to life. In 2011-12, CELP's work benefitted the residents of the Upper Kittitas Valley, the Palouse, the Skagit River basin, the Dungeness River basin, the Spokane River basin, the Similkameen River basin, and the Icicle Creek basin, whose drinking water is at risk or who fish or recreate in those watersheds. One example is the 2.5 million visitors to

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the City of Spokane's Riverfront Park who benefit from CELP's return of water to Spokane Falls, which previously ran dry due to hydropower diversions.

CELP has a long history of making targeted federal and state FOIA requests and using the information to benefit the public good. CELP's legal and technical staff and volunteers are ably equipped to analyze relevant data produced in response to a FOIA request and then disseminate it to a larger public through public outreach, conferences, and agency advocacy. CELP also regularly works with and provides information procured via FOIA and state public disclosure requests to federal, state and local governmental decision-makers thereby assisting policy making. CELP also has used information procured from FOIA and state public disclosure requests in its publications, newsletters, press releases, and conferences consistent with CELP's advocacy programs for clean, ample water. CELP has no financial interest in the requested information and will not use the information for financial gain.

Puget Soundkeeper Alliance (Soundkeeper) is a 501(c)(3) non-profit environmental organization with approximately 1,420 members and supporters. Founded in 1984, Soundkeeper is a founding member of the international Waterkeeper Alliance, a national movement founded by Robert F. Kennedy Jr. Today, Waterkeeper Alliance and its member organizations are the fastest growing environmental movement in the world with over 200 licensed Waterkeepers on six continents.

Soundkeeper's mission is to protect and preserve the waters of Puget Sound by monitoring, cleaning up and preventing pollutants from entering its waters. Soundkeeper's members use and enjoy Puget Sound's marine waters and freshwater tributaries, for commercial, general recreational and aesthetic purposes. Soundkeeper and its members have been actively involved in Puget Sound water quality issues and desire to protect and improve water quality throughout Puget Sound.

To accomplish its mission, Soundkeeper actively monitors Puget Sound through kayak patrols and uses the Soundkeeper patrol boat on a weekly basis enlisting a network of trained volunteers to detect and report pollution. As a major environmental stakeholder, Soundkeeper actively engages government agencies and businesses working to regulate pollution discharges from sewage treatment plants, industrial facilities, construction sites, municipalities and others. Soundkeeper actively enforces the Clean Water Act of 1972, using the power granted to citizens to sue under provisions of the Act, to stop polluters in their tracks and bring egregious polluters into compliance with the law. As one of the nation's leading citizen advocates, Soundkeeper actively analyzes relevant data and monitors Clean Water Act compliance. Over the past twenty years, Soundkeeper has demonstrated its ability to enforce, improve and expand coverage of permits issued under the Clean Water Act.

Soundkeeper also disseminates messages about pollution prevention, current pollution issues and opportunities for citizen advocacy via their multi-faceted communication tools. These tools include providing information to government decision makers, undertaking various

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campaigns on important issues affecting water quality, conducting frequent outreach to the news and popular media, and circulating newsletters to supporters, as well as various public workshops. Soundkeeper has the ability to thereby inform and mobilize a public dialogue relating to issues of importance to their members and relevant to their organizational goals. Moreover, Soundkeeper has a demonstrated capacity to utilize information in support of administrative oversight, intervention and judicial review of Clean Water Act violations. Soundkeeper is actively engaged in the public dialogue currently underway relating to discharges from agricultural operations. Soundkeeper has no financial interest in the requested information.

The Community Association for the Restoration of the Environment (CARE) is a 501(c)(3) non-profit grassroots organization based in Washington State that is composed of concerned community members. Its mission is to inform Washington State residents about activities that endanger the health, welfare, and quality of life for current and future Washingtonians through education and citizen empowerment. CARE also acts as an advocate to protect and restore the economic, social, and environmental resources in Washington State. In carrying out its mission, CARE has appeared in numerous local, state, and federal proceedings on behalf of the public's interest.

CARE's organizational purposes to protect the environment on behalf of the public are adversely affected by the pollution that can be linked to CAFO's. These violations have caused significant environmental contamination of the soil and groundwater that the public depends upon for their livelihood. Furthermore, but for the unlawful actions by CAFO's, CARE would not have to spend as much of its resources on the environmental problems created by illegal discharges from individual large-scale industrial farming operations. CARE is actively engaged and equipped to inform citizens of the health risks that can be caused by operations like CAFO's. CARE has no financial interest in the requested information and will not use the information for financial gain.

CONCLUSION

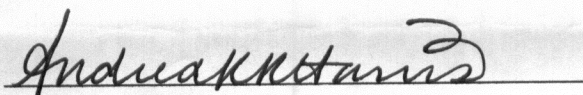
Since none of the statutory exceptions from the FOIA's mandatory disclosure provisions apply, access to the requested records should be granted within twenty (20) working days from the date of your receipt of this request. If this request is denied in whole or in part, I ask that you justify the denial with reference to specific exemptions in the Act and that you release any material that can be segregated or otherwise exempt material. I further request that you describe the deleted material in detail. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in the event an appeal is taken.

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I thank you in advance for your prompt reply. Please do not hesitate to contact me should you have any questions, concerns or comments regarding this request. You may direct all communications and responses relating to this request directly to me.

Sincerely,



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Attorney

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Cc: Suzanne Skinner (CELP), Katelyn Kinn (Soundkeeper), Helen Reddout (CARE)

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